



First Annual Report of

COMPENSATION REVIEW COMMISSIONER

for period

July to December, 1983

Submitted to:

Lieutenant Governor in Council

March, 1984

OFFICE OF
COMPENSATION REVIEW COMMISSIONER



PROVINCE OF
PRINCE EDWARD ISLAND

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March 1, 1984

Lieutenant Governor in Council
Province of Prince Edward Island
Charlottetown
Prince Edward Island

Dear Sir:

In keeping with Section 28 of the Compensation Review Act, Stats. P.E.I. 1983, c.6, I present this report of activities for the 1983 calendar year.

I wish to acknowledge the excellent cooperation received from public sector employers in the administration of this Act.

Respectfully submitted,

Donald E. Nemetz
Commissioner

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I. GOVERNMENT RESTRAINT PROGRAMS IN GENERAL

The *Compensation Review Act*,¹ which restrains salaries in the public sector, is a part of the Provincial Government's broader fiscal restraint program. Through the 1960s and 1970s, while governments at all levels rapidly expanded their service programs, costs were of secondary concern. The rising inflation and interest rates of the 1970s caused some worry, however, and led to the controversial wage and price controls briefly imposed by the Federal Government in the mid-1970s. The increasing costs of government programs, which grew at rates equal to or greater than inflation, were met by taxation and deficit financing. As long as the economy was expanding the situation was manageable; however, the current economic recession has altered this prospect.

During the past two years, federal and provincial governments have launched a variety of special programs for restraining public expenditures. The normal method of controlling government outlays is, of course, the budgetary process. Annual spending limits are set for each program and administering agencies are expected to stay within them. One of the major expense items in most government operations is the payroll, which represents roughly one-half of the total operating budget of the provincial government. It is therefore a logical target for fiscal restraints.

Any government faced with insufficient funds for its programs can choose among several alternative approaches:

1. Cutting back in the scope, coverage, or quality of programs, or eliminating some of them altogether.
2. Shifting a portion of the costs to the direct beneficiaries of the programs--sometimes called user fees.
3. Reducing administrative costs.

¹ Stats. P.E.I. 1983, c.6. A copy of the Act is appended to this report for convenient reference.

Measures under the first heading will affect payroll costs differently. For example, reducing the dollar amount of individual social assistance grants might not affect staffing needs, whereas reducing the number of grants or eliminating a category of assistance certainly would. The second approach--user fees--is possible in some, but not all, programs. For example, post-secondary educational institutions can increase tuition fees, but elementary and secondary schools cannot. Further, these economy measures pose difficult social problems, as the current controversy over user fees for health services illustrates.

Salary restraint falls under the third option, that of reducing administrative costs. Payroll costs can be curtailed by either restricting salary levels or limiting the number of employees. Spending agencies could be given a choice between one or the other, or some combination of both. In the absence of collective bargaining the choice would be a management decision, but with collective bargaining the process is more complex. Where government bargains, as it does, with not one but a number of unions or employee groups, the problems multiply. This situation in the Prince Edward Island public sector gave rise to the type of restraint program introduced by the *Compensation Review Act*.

The restraint programs adopted by the different Canadian provinces range from the relatively severe measures of British Columbia and Quebec, to milder forms such as the 5% one year increase for Nova Scotia civil servants. The Alberta program, somewhere in between, takes a typically broad approach and is based on the following fiscal policies:²

- restrict the level of funding to entities receiving government grants...for at least two years;
- postpone virtually all new government programs;

² Declaration of Provincial Treasurer of Alberta, November 9, 1983.

- review the necessity of continuing existing government programs;
- restrain funding available for wages, salaries and benefits in the public service for at least two years;
- continue to reduce unnecessary manpower positions primarily in areas where anticipated services or sustained growth are no longer required.

Prince Edward Island's program was set forth in the 1983 Budget Speech, and other submissions to the Legislative Assembly. It too calls for the reduction or elimination of some established services, with an attendant cut-back in the number of civil service positions. New programs have been avoided, as have increases in most user fees. Tax increases have been generally rejected because of a perceived negative impact on economic recovery. A one-year freeze on public sector salaries, for the year 1983-84, with a 5% increase in the following year, was first proposed to the Legislature and later withdrawn. The *Compensation Review Act* was enacted in its place, but for a majority of the public sector employees the actual application of the salary restraints prescribed in the Act was postponed until April, 1984. One notable exception was school teachers and school support staff, who came under restraint in August-September of 1983.³ This postponement limited the impact on the 1983-84 budget deficit, projected at approximately \$20,000,000. The full budget effect of this element of the restraint program will not therefore be felt until fiscal year 1984-85.

³ These and other exceptions were not deliberately planned, but occurred because of differences in the expiry dates of existing collective agreements.

II. SUMMARY OF COMPENSATION REVIEW ACT PROVISIONS

From an administrative standpoint, the salary restraint program set forth in the *Compensation Review Act* presents difficulties. It might have been simpler to have legislated a freeze on salaries, or a flat percentage increase for everyone, as originally attempted. Two reasons were given for not doing so. First was the expressed desire that the collective bargaining process be continued--but within limits. Second was the belief that an identical across-the-board percentage increase for all employees might not be the most fair or reasonable approach.

The somewhat complex process established for determining fair and reasonable salary increases was further complicated by an amendment allowing for special exemptions. A summarization of the Act's key provisions might usefully precede a report on the program's administration to date.

Coverage

The salary restraints apply to all "public sector employees" broadly defined to include staff of:

- The Provincial Government
- Crown agencies
- School boards
- U.P.E.I. and Holland College
- Hospitals and licensed nursing homes
- Addiction services
- Charlottetown Area Development Corporation, and
Summerside Waterfront Development Corporation
- Municipalities, if they so request

Limits on Increases

There is allowed a general salary increase of up to 5% for each identified group of employees over a two-year period. Not more than 2% may be granted during the first year. An additional 2½% may be allowed during the two years for incremental increases and "special adjustments". The latter are defined in the Act

and include enhancement of the salaries of lower paid staff. It is to be noted that these are allowable maximums, not guaranteed increases. It is also important to understand that the award is by groups of employees, not individuals. Each member of a group need not receive the same percentage increase. The cost of new fringe benefits must be included within the percentage limitations. All existing collective bargaining units are recognized as groups for purposes of the Act; other groups are to be proposed by the employer and approved by the Commissioner.

Restraint Period

Employees covered by union contracts or compensation plans expiring on or after April 1, 1983 are subject to restraint for a 24-month period beginning at that time. A majority of the public sector employees were covered by contracts which expired March 31, 1983, with increases in the 10% range already negotiated to take effect April 1, 1983, and so do not come under restraint until April 1, 1984. Members of other groups have been brought under restraint on various dates subsequent to April 1, 1983. The Act will therefore remain in force until at least April, 1986.

"Fair and Reasonable" Guidelines

The Act requires that increases within the percentage maximums must be "fair and reasonable" having regard for:

- the ability of the employer to pay
- recent compensation experience as related to the Consumer Price Index
- comparisons between groups within the public sector
- comparisons with private sector rates
- job security considerations
- productivity
- ability to recruit and retain competent staff

Public sector employers who negotiate on behalf of government, or otherwise fix salaries, are to observe these guidelines, as is the Compensation Review Commissioner in approving compensation plans.

Administration

A position of Compensation Review Commissioner was established to administer the Act. Compensation plans are developed in the same manner as in the past: through collective bargaining with unionized groups or by the employer for non-unionized employees. However, prior to taking effect, these plans must be reviewed and approved by the Commissioner. If the plans are found not to comply with the Act, modification is required. Ultimately, the Commissioner has authority to order a settlement.

Opting-Out Agreements

An amendment was added prior to enactment of the Act which allows an employee group to escape the review of the Commissioner by entering into a special exclusion agreement with the employer (Section 30). This agreement guarantees the group a 5% increase and offers the possibility of 2½% more. The "fair and reasonable" guidelines enunciated in the Act have no applicability, nor does the Act make provision for review, administration, or enforcement of compensation plans entered into under these agreements. Government is installing a review process to verify that such plans do in fact conform to the limits contained in the agreements.

III. ADMINISTRATION OF THE ACT

Considering the apparent complexities of the program, few serious difficulties have thus far arisen in its administration. Certain inequities in the treatment of employees under the Act will exist, but this was true under the system in place prior to restraints. It may well be that the entire system for determining public sector compensation deserves a careful review to assure that the interests of government, employees, and the public generally are properly served.

The time-table for the application of restraints, generally and for individual employee groups, has also caused problems. The Act was assented to on June 23, 1983, with the provision that it not come into force until thirty days thereafter. This delay was to allow time for the negotiation of opting-out agreements under Section 30. Once in force, the Act provisions were made retroactively effective to April 1, 1983. This meant that compensation plans developed during the interim period--April 1 to the July 22 promulgation--were subject to the Act.⁴

Identification of Public Sector Employers and Employees

The Act provides that:

*"The Commissioner shall...determine whether an employer or employee is a public sector employer, or public sector employee under this Act."*⁵

His discretion is, however, closely circumscribed, for the Act quite specifically identifies the employers covered, and proceeds to define a public sector employee as any person employed by one of them.

⁴ The Compensation Review Commissioner was appointed by the Lieutenant Governor in Council effective July 14, 1983.

⁵ Section 5(1)(d).

TABLE I, following, lists these employers. Only two of the categories require interpretation. One is "Agencies of the Crown, including the Crown Corporations set out in Schedule B and Schedule C to the *Financial Administration Act*". The employees of a number of these agencies are under compensation plans negotiated with or determined by "the Government", principally the agreement with the Public Service Association (PSA) and the Senior Compensation Plan. In these instances the provincial Treasury Board is, in effect, the employer and as such reports to the Commissioner on these employees.

The other category requiring explanation is "such other board, commission, corporation or organization as may be prescribed by the regulations", or a municipality or other public body that requests Executive Council to include it.⁶ There are a number of agencies which Executive Council might well have included by virtue of their being funded by the Province and engaging paid staff. Government chose the alternative approach of applying the same restraint limitations to these agencies through the budgetary process, thus achieving a result somewhat equivalent to that for groups under Section 30 exclusion agreements.

Several organizations identified in the Act as public sector employers have protested their inclusion. Their arguments have addressed the issue of whether they ought to have been included, rather than questioning that they, in fact, were. The Commissioner, being bound in these cases by what the Act prescribes, has denied all such requests for exemption.

A total of 35 public sector employers have been identified as subject to the Act.

Determining whether particular employees are "public sector employees" covered by the Act has also required a certain

⁶ Section 1(j)(ix).

TABLE I

PUBLIC SECTOR EMPLOYERS COVERED

- **Provincial Government:**
 - all departments, offices, and agencies
- **Agencies of the Crown** including the Crown Corporations set out in Schedule B and Schedule C to the *Financial Administration Act R.S.P.E.I. 1974, Cap. F-6.1:*
 - SCHEDULE B**
 - Prince Edward Island Housing Corporation
 - Prince Edward Island Land Development Corporation
 - Prince Edward Island Lending Authority
 - Hospital Services Commission of Prince Edward Island
 - Health Services Commission of Prince Edward Island
 - Addiction Foundation of Prince Edward Island
 - Industrial Enterprises Incorporated
 - Prince Edward Island Liquor Control Commission
 - Prince Edward Island Energy Corporation
 - Prince Edward Island Market Development Corporation
 - Prince Edward Island Crop Insurance Agency
 - SCHEDULE C**
 - Worker's Compensation Board of Prince Edward Island
 - Public Utilities Commission
 - Georgetown Shipyard Inc.
 - Prince Edward Island Milk Commission
 - Prince Edward Island Grain Commission
 - Prince Edward Island Grain Elevators Corporation
 - Prince Edward Island Laboratory Council
 - Prince Edward Island Crown Building Corporation
 - Prince Edward Island Lotteries Commission
- **Regional School Boards (5)**
- **University of Prince Edward Island**
- **Holland College**
- **General Hospitals and Licensed Nursing Homes:**
 - Community Hospital
 - Kings County Memorial Hospital
 - Prince County Hospital
 - Queen Elizabeth Hospital
 - Souris Hospital
 - Stewart Memorial Hospital
 - Western Hospital
 - Garden Nursing Home
 - Kensington Nursing Home
 - Lennox Nursing Home
 - Livingston & McArthur Nursing Home
 - Prince County Nursing Home
 - Sacred Heart Home
 - Wood Nursing Home
- **Prince Edward Island School of Nursing**
- **Addiction Services:**
 - Alcohol & Drug Institute
 - Kings County Addiction Services
 - Prince County Addiction Services
- **Charlottetown Area Development Corporation**
- **Summerside Waterfront Development Corporation**
- **Other boards, commissions, corporations, or organizations prescribed by regulation. (None)**
- **Municipality or other public body by request:**
 - City of Charlottetown

amount of interpretation, but posed no significant problems. The types of questions or appeals thus far raised have dealt with such employee categories as consultants, contract personnel, board and commission members, seasonal workers, fee-schedule professionals, and the like.

Identification of Employee Groups

Because the compensation restraints are applied to groups of employees, the identification and registration of appropriate groups was given first priority. Section 10 of the Act states:

"Every public sector employer shall register with the Commissioner, in the form and manner required by him, within thirty days after the date this Act is enacted or within a further period of time permitted by the Commissioner."

Section 5 of the Act prescribes that the Commissioner shall:

- "(e) recognize an existing group of employees who constitute a separate bargaining unit as a group for purposes of applying this Act;*
- (f) determine whether the public sector employee has been placed in an appropriate group of public sector employees for purposes of applying this Act;*
- (g) where he is not satisfied that an employee has been placed in an appropriate group under clause (e), place the employee in such group as he considers appropriate."*

This registration process extended over a period of several months and resulted in the recognition of 90 employee groups containing approximately 8,700 employees.⁷ Details are shown in TABLE II, on the page following.

One major category of employee group is the bargaining units in existence when the Act came into effect. These

⁷ Full-time equivalents. If each part-time employee were counted, the total might approach 10,000.

TABLE II
EMPLOYEE GROUPS, STATUS, AND RESTRAINT PERIODS

Employer and Employee Group (1)	Number of Employees* (2)	Under Comm'r Review (3)	Exempt from Review (4)	Restraint Period 24 Months Beginning (5)
PROVINCIAL CIVIL SERVICE				
Senior Compensation Plan	27	X		April 1, 1984
Excluded Employees (Treasury Board, etc.)	64	X		April 1, 1984
Contract Employees	82	X		April 1, 1984
Students	417	X		April 1, 1984
Public Service Association (PSA)**	3,100		X	April 1, 1984
SCHOOL BOARDS				
Supervisory Staff	23	X		July 1, 1983
Teachers' Federation	1,373		X	September 1, 1983
Bus Drivers - (CUPE)	333		X	September 1, 1983
Clerical - (CUPE)	100		X	September 1, 1983
Custodial - (CUPE)	174		X	September 1, 1983
GENERAL HOSPITALS (Seven)				
Management and Related	42	X		April 1, 1984
Nurses (PCBC)	599	X		April 1, 1984
GHEA	420	X		April 1, 1984
CUPE	780	X		April 1, 1984
PEI SCHOOL OF NURSING				
Management	1	X		April 1, 1984
Nurses (PCBC)	29	X		April 1, 1984
GHEA	11	X		April 1, 1984
CUPE	4	X		April 1, 1984
LICENSED NURSING HOMES (Seven)				
Admin/Support (7 groups)	35	X	X	Various
Nursing & Support (7 groups)	130	X		
CUPE (2 groups)	80			
CUPE (1 group)	72	X		
ADDICTION SERVICES				
Kings County				
Administrative	1	X		April 1, 1984
Nurses (PCBC)	9		X	April 1, 1984
Other Staff (PSA)	22		X	April 1, 1984
Prince County				
Administrative	1	X		April 1, 1984
Nurses (PCBC)	11	X		April 1, 1984
Other Staff (PSA)	30	X		April 1, 1984
Alcohol & Drug Institute				
Administrative	1	X		April 1, 1984
Nurses (PCBC)	6		X	April 1, 1984
Other Staff (PSA)	47		X	April 1, 1984

TABLE II (continued)

Employer and Employee Group (1)	Number of Employees* (2)	Under Comm'r Review (3)	Exempt from Review (4)	Restraint Period 24 Months Beginning (5)
UNIVERSITY OF P.E.I.				
Faculty Association	122	X		July 1, 1984
Contract Employees	33		X	July 1, 1983
Support Staff	18		X	May 1, 1983
CUPE (2 groups)	70		X	May 1, 1983
Maintenance (IBEW)	40		X	April 1, 1984
HOLLAND COLLEGE				
Management and Related	19		Pending	April 1, 1984
Faculty Association	53		X	April 1, 1984
Support and Others (PSA)	80		X	April 1, 1984
Vocational Teachers (PSA)	75		X	April 1, 1984
GEORGETOWN SHIPYARD				
Management and Other	20	X		January 1, 1984
Production Group (IAMAW)	78	X		March 1, 1984
CHARLOTTETOWN AREA DEV. CORP.				
Four groups	14	X		January 1, 1984
INDUSTRIAL ENTERPRISES INC.				
.....	12	X		April 1, 1984
MARKET DEVELOPMENT CENTRE				
.....	15	X		April 1, 1984
P.E.I. GRAIN ELEVATORS CORP.				
Management	5	X		April 1, 1984
PSA	7		X	April 1, 1984
P.E.I. MILK COMMISSION				
Management	2	X		April 1, 1984
PSA	2		X	April 1, 1984
SUMMERSIDE WATERFRONT DEV. CORP.				
General Manager	1	X		August 1, 1983
Staff	8	X		August 1, 1983
CITY OF CHARLOTTETOWN				
Non-Union Staff	16		Pending	January 1, 1984
Union Staff (CUPE)	69		X	January 1, 1984

* With some exceptions, such as certain hospital classifications, these are full-time equivalents.

** Bargaining unit abbreviations:

- PSA - Public Service Association, Inc.
- CUPE - Canadian Union of Public Employees
- PCBC - Provincial Collective Bargaining Committee (Registered Nurses)
- IBEW - International Brotherhood of Electrical Workers
- IAMAW - International Association of Machinists and Aerospace Workers
- GHEA - General Hospital Employees Association

number 26--or more than 40 if the locals for the individual hospitals are counted separately--with a total membership of 8,000. They represent more than 90% of all public sector employees.⁸ These bargaining units range in size from fewer than 5 to more than 3,000 members. Some are cohesive, single-profession groups, such as teachers or nurses; others are highly diversified groups, such as the provincial Public Service Association covering more than 450 job classifications with annual pay levels ranging from \$12,000 to \$75,000; still others are made up entirely of employees at the lower end of the pay scales.

In their proposals to the Commissioner, nearly all employers divided their non-unionized staff into two or more groups, reflecting differing policies for deciding compensation. For example, most employers identified a small senior management or administrative group, where compensation is more apt to be based on individual qualifications and performance. Other common groups were those comprising office staff, production/maintenance workers, or professional employees.

Special consultations were held between the Commissioner and employers on the appropriateness of 20 or more questionable groups, and, with several exceptions, resolved without difficulty.

Section 30 Exemption Agreements

In introducing the opting-out amendment, Government took the position that its principal restraint objective of holding public sector compensation increases within 7.5% over a two-year period would still be met. Immediately after passage of the Act, and before it was to come into force, Government therefore notified all public sector employers of its own intention to enter into an exclusion agreement with the Public Service Association.

⁸ This is the reverse of the situation in non-government employment on Prince Edward Island where only 10% of the work force is unionized.

Other employers were encouraged to do the same with their unionized employee groups. As TABLE II reveals, Government did not, however, execute Section 30 agreements with its four non-unionized staff groups. A total of eighteen exclusion agreements covering 5,500 employees were signed during the 30-day grace period, June 23 - July 24, 1983. Public sector employers declined entering into such agreements with 28 unionized groups, having a combined membership of more than 2,000 employees. The University of Prince Edward Island Faculty Association, a previously existing bargaining unit, did not request exemption, nor was exempt status requested for the Georgetown Shipyard bargaining unit. All 35 public sector employers, with the single exception of Holland College, have one or more groups with whom Section 30 agreements were not signed.

Compensation Plans Reviewed

By the end of 1983, twelve two-year compensation plans had been received by the Commissioner. Of these, three were approved as submitted, four were under review at that time, and the remainder were approved after modification. The two-year salary increases authorized by these plans have ranged from 4% to 7.5%. In no instance has it been necessary for the Commissioner to order a roll-back. The general pattern has been for employers to propose up to 5% increases for senior staff and from 5% to 7.5% for employees in the lower salary brackets. Fringe benefit improvements have been avoided. It is fair to state that employers and employees in all instances to date have acted responsibly in observing the requirements of the Act.

A number of compensation plans have been adopted under Section 30 exemption agreements, but this Office has little knowledge of their content.

Salary Plan Changes Between April 1, 1983 and March 31, 1984

It has been noted that although the *Compensation Review Act* came into effect April 1, 1983, a number of employee groups do

not come under the restraint limits until as late as April 1, 1984. The Act is silent regarding salary adjustments during that "pre-restraint" period. These could effectively circumvent the restraints. The Commissioner therefore issued instructions that because increases awarded during that period could be contrary to the intent of the legislation, employers should refer proposed compensation adjustments for approval. A number of such cases were referred, reviewed, and either approved or disallowed.

Assuring Compliance

Once compensation plans have been approved, what measures can and should be taken to assure continued compliance with their provisions for the two-year period? What is to prevent an employer granting pay increases or benefits in excess of what has been approved, unilaterally or in agreement with an employee group? It can be assumed that employers will not deliberately violate the terms of an approved plan, but there is substantial room for interpretation of what actions might or might not constitute violations.

Program, technological, and organizational changes affect the way work is done in an organization and who does it. This affects the content of jobs, the qualification requirements for acceptable performance, and the fairness of existing salary levels. It may become necessary or desirable to elevate a technician job to a professional level, or the reverse. Reductions in numbers of employees may necessitate an up-grading of those remaining, and so on. This Office has issued instructions to employers regarding these actions, and for processing amendments or modifications to those compensation plans.

There remains the problem of somehow verifying or auditing compliance. Rather than the Commissioner's Office engaging staff to undertake audits for this purpose, arrangements are being made for the present external auditors of public sector

employers to do so as a part of their normal audit procedures. The added costs will be minimal when compared with those of special audits. Government is planning to take similar measures to verify compliance with compensation plans developed under Section 30 exemption agreements.

IV. DETERMINING COMPENSATION IN THE PUBLIC SECTOR

Any difficulties in achieving fairness in the application of restraints to public sector salaries stem primarily from the complex and confused manner in which these salaries were set in the first place. A brief review of the present system and how it evolved may help in understanding the problem. Prior to 1975, Government established salary ranges for all classes of positions in the public service. Outside consultants were at times engaged to review the fairness of these salaries in relation to labour market rates and other relevant factors. The Civil Service Commission, Treasury Board, and government departments and agencies cooperated in the process. Final decisions were taken by Executive Council and assented to by the Legislature when it enacted the annual budget.

This system changed when collective bargaining was extended across the provincial public sector in the mid-1970s. The manner in which this occurred, and the system which resulted, explain some of the problems now being experienced.

Unionized Employees

Widespread collective bargaining, or unionization, among public sector employees on Prince Edward Island dates back roughly ten years, during which time 90% to 95% of these employees have been brought under this system. With few exceptions, a newly hired employee now joins the appropriate bargaining group as a condition of employment. As TABLE II reveals, there are more than 40 currently existing collective bargaining units. The compensation of the employees within these groups is determined through a bargaining process and is set down in an agreement, or contract.

There are differences in how these groups are structured, in the rights and privileges enjoyed by their members, and in

the bargaining processes that are followed. At least a half-dozen different Legislative Acts cover one or more groups: *Labour Act, School Act, Hospitals Act, Nurses Act, Civil Service Act*, etc. There are both variations and similarities among these Acts. The principal Public Service Association (PSA) group, for example, contains the great majority of the provincial government civil servants. They are categorized into more than 450 different job classifications carrying widely varying salaries. The group includes clerks, labourers, technicians, professionals, and managers up to one level below deputy minister. Other collective bargaining groups comprise members of a single profession; still other groups are made up of a narrow range of lower salaried, occupational classifications. Some are province-wide, others highly localized. And so on.

The major "employer", the Provincial Government proper, negotiates with only one union group while some much smaller employers deal with several. For example, the University of Prince Edward Island negotiates with four separate bargaining groups. There are three bargaining units in each general hospital--the Canadian Union of Public Employees, the Nurses Provincial Collective Bargaining Committee, and the General Hospital Employees Association--however, a single agreement is negotiated with each union covering all seven hospitals. A somewhat similar situation exists with the five regional school boards.

With only a few exceptions, Prince Edward Island public sector bargaining units are prohibited by law from striking.⁹ On matters of compensation, binding arbitration is commonly prescribed. Binding arbitration on non-monetary issues, which can have an impact on salary negotiations, is guaranteed in some situations, or only permitted with the consent of both parties in others.

⁹ The exceptions are those units functioning under the *Labour Act*, such as CUPE locals at the University of Prince Edward Island and addiction centre groups.

Three limited coordinating mechanisms exist: (a) the above-noted province-wide negotiations of hospitals and of schools; (b) the inclusion of Treasury Board representation on some—but not all—employer negotiating teams; and (c) the fact that most of the more than 40 locals are under five principal unions or employee associations. However, the important fact is that the compensation of unionized public sector employees is determined through separate negotiations carried out between the managements of more than a dozen employing agencies and the numerous bargaining units.

Non-Unionized Employees

There are approximately 500 full-time, permanent public sector employees, as defined in the Act, who do not now belong to collective bargaining units.¹⁰ For the most part, these are executives, senior administrators, confidential staff, professionals engaged under contract, and personnel of crown agencies and licensed nursing homes. Their compensation is normally determined by the "employer": Executive Council, Treasury Board, boards of directors, or management. For example, the salaries of deputy ministers and other senior provincial government staff are fixed by Executive Council, Treasury Board determines others in acting on budgets or approving employment contracts, and boards of directors of crown agencies usually set the compensation for their personnel.

Various criteria are used in determining these salaries, probably the most common being that of matching the increases negotiated for union groups within the same organization. On the face of it, this would seem to represent an abdication of management's right and obligation to evaluate the worth of the jobs and of the people in them. To a considerable extent this is true. The justifications given include: (a) fairness to non-union staff performing the same type of work; (b) the need

¹⁰ There are also a number of seasonal or casual employees who are outside bargaining units.

in some cases to maintain adequate differentials between unionized staff and non-union supervisors; and (c) discouraging experienced employees from leaving in search of possibly higher-paying unionized jobs. Where this matching procedure is not followed, the trend has been for non-unioned employees to fall behind.

Factors Considered in Setting Compensation Levels

The *Compensation Review Act* lists several factors to be considered in determining fair and reasonable compensation. These include government's ability to pay, the impact of inflation, private sector rates, internal job comparisons, security, and productivity. Most of these are in some limited way introduced into present negotiations, each side placing emphasis on those favourable to its position. Union representatives concentrate during periods of inflation on pay increases to keep pace, and on job security. Employers might emphasize reduced ability to pay and productivity. Such factors as equity within the system and between the public and private sectors may be acknowledged by both sides as relevant, but viewed quite differently.

Each bargaining unit seeks to achieve pay relationships within its own membership which meet its particular view of fairness--for example, giving emphasis to seniority. It also seeks the best possible settlement for its members; if this exceeds what others are paid for similar work, this is the way the free bargaining system works. Government on the other hand, is more concerned with equity throughout the public sector--between different union groups and between union and non-union workers.

Comparisons between government pay rates and those in the private sector pose a special problem in Prince Edward Island. Union representatives strongly oppose making comparisons between union and non-union rates of pay; however, as has been noted,

unionization is primarily a public sector phenomenon on the Island, with only 10% of the private sector organized. To adhere to this policy would constitute giving extraordinary weight to a small segment of the total Island labour market.

The outcome of the above has been that comparisons now made between government and private sector pay rates are quite restrictive. Only rates paid by a few what are termed "better employers" are used; these include the large unionized employers such as Maritime Electric, Island Telephone, and major construction firms, and several other large firms. Comparisons are also made between different public sector employers who separately negotiate with employee groups, such as the Provincial Government, hospitals, schools, and the University. These are of value in assuring a measure of equitable treatment among these employers, but of little use in determining what are reasonable levels of pay. Finally, comparisons are made with salaries paid in other provinces. These are helpful in respect to uniquely governmental jobs where recruitment across provincial boundaries is common; but of less relevance if recruitment is exclusively or primarily from the Island.

Results Produced by Present System

As would be expected, the present system of determining compensation in the public sector produces uneven results. Variations in salaries paid by different public sector employers for similar jobs are probably seldom more than 10% to 15%. One agreement will grant a certain percentage increase and subsequent agreements will follow, or leap-frog in anticipation of the next move. Substantial discrepancies do, however, occur. Examples can be found where one public sector employer pays up to double that of another for the same type of work. Differences between public and private sector rates similarly range from modest to substantial, and with much less consistency than within the public sector.

Conclusion

There is recognition in the *Compensation Review Act* that inequities probably exist in the treatment of employees under the pay plans on which the restraints are to be applied. Provision is made for special salary adjustments in an effort to ameliorate certain of these. Further, the Guidelines for evaluating proposed plans include factors related to equitable treatment. In the administration of the Act, employers and employee groups, as well as the Commissioner, are seeking to achieve fairness; but it must be realized that the basic inequities of the present system are being perpetuated. In some cases they are being made worse.

V. PLANNED ACTIVITIES FOR THE REMAINDER OF THE RESTRAINT PERIOD

All of the compensation plans under the restraint program will have been prepared and approved by mid-1984. They will begin to expire after April, 1985, with the great majority extending into 1986.

In terms of the activities of this Office, by the middle of 1984 emphasis will shift to oversight of the administration of the agreed-upon compensation plans. Several kinds of matters will arise, including, (1) revisions of plans to reflect changes in programs and staffing requirements; (2) the acceptability of proposed job reclassifications, adjustments in benefits, and the like; and (3) cases of possible or discovered non-compliance. It is now too soon to tell how the level of activity of the Office of Commissioner will be affected, other than to anticipate a reduction from the present. Accordingly, a reduced budget has been requested for the coming year.

Several features of the restraint program prescribed by the Act raise basic questions regarding how compensation for public servants is, or ought to be, determined. The previous section of this report touches on certain of these. The Guidelines contained in SCHEDULE A of the Act,¹¹ and briefly discussed in Chapters II and III of this report, have been of only limited application to date. They may come more into play in the months ahead. This Office has been gathering and analyzing information relevant to these and will intensify this activity in the immediate future. Among the specific subjects being researched are:

1. Past relationships between costs of public services, revenues, personnel service expenditures, and inflation.
2. Salary comparisons for comparable work within the various public services and with the private sector.

¹¹ See page 10 of the Act appended to this report.

3. Relationships between compensation, job security, and productivity.
4. The applicability of the concept of "ability to pay" to government as an employer.

The results of this on-going research--and its use in the administration of restraints--will be reported on during the coming year and should prove useful in the evaluation of the program.

LAWS OF PRINCE EDWARD ISLAND

Compensation Review Act



Charlottetown

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1983

CHAPTER 6

Compensation Review Act

(Assented to June 23rd, 1983)

BE IT ENACTED by the Lieutenant Governor and Legislative Assembly of the Province of Prince Edward Island as follows:

1. In this Act

(a) "base date" means, in respect of a particular public sector employee or group of public sector employees

Definitions

base date

(i) subject to a compensation plan, however established, which includes terms in a final arbitration award, a collective agreement or other agreement between the employer and an employee or group of employees and

(A) is in existence on the operative date, or

(B) expired prior to the operative date and has not been renewed prior to the operative date,

the expiry date of the agreement or award occurring after the operative date,

(ii) subject to a compensation plan established by the employer and in effect on the operative date, the day before the effective date of changes in the plan,

(iii) not subject to a compensation plan on or before the operative date, the day before the effective date of the first compensation plan of the employee or group of employees established or entered into on or after the operative date;

(b) "Commissioner" means the Compensation Review Commissioner appointed under section 4;

Commissioner

(c) "compensation" means all forms of pay and benefits paid or provided, directly or indirectly, by or on behalf of an employer to or for the benefit of an employee, and includes the relevant salary scales and incremental payments under the salary scales, but does not include

compensation

(i) contributions made under the Canada Pension Plan,

(ii) premiums under the *Unemployment Insurance Act* (Canada) R.S.C. 1970, Chap. U-2,

(iii) assessments under the *Workers' Compensation Act* R.S.P.E.I. 1974, W-10;

compensation
plan

(d) "compensation plan" means the provisions, however established, for the determination and administration of compensation of an employee or group of employees and includes such provisions

(i) contained in a collective agreement,

(ii) agreed to by an employee or group of employees and an employer,

(iii) established by an employer, and

(iv) established in accordance with or pursuant to any enactment,

but does not include a compensation plan established or entered into after the expiration of the review period;

group

(e) "group" means a group of public sector employees established under section 11;

guideline

(f) "guideline" means a compensation guideline set out in Schedule A;

limit

(g) "limit" means the maximum allowable increase during the review period as set out in section 16;

operative
date

(h) "operative date" means April 1, 1983;

public
sector
employee

(i) "public sector employee" means a person employed by a public sector employer;

public
sector
employer

(j) "public sector employer" means

(i) the Government,

(ii) agencies of the Crown including the Crown Corporations set out in Schedule B and Schedule C to the *Financial Administration Act* R.S.P.E.I. 1974, Cap.F-6.1,

(iii) a regional school board as defined in the *School Act* R.S.P.E.I. 1974, Cap.S-2,

(iv) the University of Prince Edward Island,

(v) Holland College,

(vi) a hospital or nursing home licensed under the *Hospitals Act* R.S.P.E.I. 1974, Cap.H-11,

(vii) an organization receiving funds from the Government to provide addiction services,

(viii) the Charlottetown Area Development Corporation and the Summerside Waterfront Development Corporation,

(ix) such other board, commission, corporation or organization as may be prescribed by the regulations,

and includes a municipality or other public body that makes a request in writing to the Executive Council and is approved by Executive Council to be included in the compensation review program embodied in this Act;

- (k) "review period" means, subject to subsection 21(5), the period of twenty-four months commencing on the day following the base date; review period
2. Subject to section 30, this Act applies to all public sector employers and public sector employees notwithstanding the provisions of any other enactment or any agreement and in the event of any conflict, this Act prevails. Application
3. The objects of this Act are during the review period Objects
- (a) to monitor increases in compensation in the public sector;
 - (b) to enable collective bargaining to continue;
 - (c) to preserve public services and retain job security within the ability of the employer to pay;
 - (d) to ensure that compensation plans in the public sector are within the limit and fair and reasonable having regard to the guidelines;
 - (e) to provide an administrative mechanism to achieve those purposes.
- PART I**
- ADMINISTRATION**
4. (1) The Lieutenant Governor in Council shall appoint a Compensation Review Commissioner and may fix the terms and conditions of his appointment and his remuneration. Compensation Review Commissioner
- (2) The Commissioner shall be reimbursed for actual reasonable expenses necessarily incurred by him in the performance of his duties. Expenses
- (3) Where the Commissioner is unable to act, the Lieutenant Governor in Council may appoint another person to act in his place. Acting appointment
5. (1) The Commissioner shall Duties and powers of the Commissioner
- (a) administer this Act;
 - (b) inform the public with respect to the compensation review program embodied in this Act;
 - (c) monitor the development of all compensation plans of public sector employers and public sector employees;

- (d) determine whether an employer or employee is a public sector employer, or public sector employee under this Act;
 - (e) recognize an existing group of employees who constitute a separate bargaining unit as a group for purposes of applying this Act;
 - (f) determine whether the public sector employee has been placed in an appropriate group of public sector employees for purposes of applying this Act;
 - (g) where he is not satisfied that an employee has been placed in an appropriate group under clause (e), place the employee in such group as he considers appropriate.
- Idem*
 - (2) The Commissioner may for the purposes of this Act
 - (a) specify forms to be used; and
 - (b) require a public sector employer or public sector employee to provide any relevant information he considers necessary.
- Power of investigation*
 - 6. (1) The Commissioner or a person authorized by the Commissioner may investigate any compensation plan in order to obtain information necessary for the Commissioner to perform his duties under this Act.
- Idem, re Public Inquiries Act*
 - (2) For the purpose of this section, the Commissioner has the powers of a commissioner appointed under the *Public Inquiries Act* R.S.P.E.I. 1974, Cap.P-30.
- Staff*
 - 7. The Commissioner may appoint
 - (a) a person who shall, on the direction of the Commissioner, establish and maintain a registry for the filing of compensation plans under section 13 and obtain information necessary for the Commissioner to perform his functions under this Act; and
 - (b) a person who shall, on the direction of the Commissioner, provide mediation and fact finding services.
- Mediation services*
 - 8. The Commissioner may, on the request of a public sector employer, public sector employee or representative of either of them, direct a mediator to provide mediation or fact finding services to assist the employer, employee or representative to reach or establish a compensation plan in accordance with the requirements of this Act.
- Mediator may recommend settlement terms*
 - 9. (1) Where a mediator is providing services under section 8, he may recommend terms of a compensation plan to the public sector employer, public sector employee or representative of either of them.

- (2) Terms recommended by a mediator under this section are not binding on the Commissioner. Terms not binding on Commissioner
10. Every public sector employer shall register with the Commissioner, in the form and manner required by him, within thirty days after the date this Act is enacted or within a further period of time permitted by the Commissioner. Registration
11. For the purpose of applying this Act every public sector employer shall place every public sector employee in an appropriate group in accordance with the criteria established by the Commissioner. Groups
12. All compensation plans established or entered into on or after the operative date shall be of twenty-four months duration. Duration of compensation plan
13. (1) Every public sector employer shall file with the Commissioner, within Filing compensation plan
- (a) thirty days of reaching or establishing a compensation plan; or
- (b) a further period of time permitted by the Commissioner, particulars of that compensation plan in the form and manner required by the Commissioner and where the compensation plan results from an arbitration award, a copy of the arbitration award.
- (2) Before filing the particulars of a compensation plan under subsection (1), the employer shall give to the representative of the group of public sector employees to whom the plan applies an opportunity to verify that the particulars to be filed accurately reflect the agreement of the parties. Verification
14. The Commissioner shall review all compensation plans filed under section 13 and determine if the plans are within the limit and fair and reasonable having regard to the guidelines established under this Act. Review by Commissioner
15. No public sector employer shall implement a compensation plan established or entered into after the operative date before the plan is approved by the Commissioner. Implementation of plans

PART II

COMPENSATION

16. (1) The maximum allowable increase in the straight time average hourly rate of pay of a group in the review period shall not exceed 5% of the straight time average hourly rate of pay of that group on the base date. Limit, pay increase

- | | |
|------------------------------------|---|
| First year, maximum increase | (2) Not more than 40% of the maximum allowable increase under subsection (1) may be applied in the first twelve months of the review period. |
| Improvement in benefits | (3) Where an improvement to an employee benefit results in an additional cost to the employer, the maximum allowable increase specified in subsection (1) shall be reduced by an appropriate percentage to reflect that additional cost. |
| Increments and special adjustments | (4) Incremental payments on salary scales and special adjustments may be included in the compensation plan if the costs of the increments and adjustments do not exceed an additional 2.5% of the straight time average hourly rate of pay of that group on the base date. |
| Special adjustments | (5) The special adjustments referred to in subsection (4) may be used to provide <ul style="list-style-type: none">(a) enhancement of the levels of compensation of lower-paid employees;(b) lump sum payments;(c) adjustments agreed to during negotiations to salary rates which are substantially below market rates;(d) salary grid revisions agreed to during negotiations. |
| Guidelines | 17. The guidelines set out in Schedule A shall be applied by the Commissioner in reviewing compensation plans. |
| Employer to justify plan | 18. Where a compensation plan is filed under section 13, it is the responsibility of the public sector employer to demonstrate to the satisfaction of the Commissioner that the compensation plan is <ul style="list-style-type: none">(a) within the limit; and(b) fair and reasonable having regard to the guidelines. |
| Approval of plan | 19. Where the Commissioner is satisfied that a compensation plan is <ul style="list-style-type: none">(a) within the limit; and(b) fair and reasonable having regard to the guidelines, he shall approve the plan and notify the public sector employer and any other person the Commissioner considers appropriate. |
| Rejection of plan | 20. Where the Commissioner determines that a compensation plan is <ul style="list-style-type: none">(a) not within the limit; or(b) within the limit but is not fair and reasonable having regard to the guidelines, he shall reject the plan and shall <ul style="list-style-type: none">(c) so notify the public sector employer and any other person he considers appropriate; |

- (d) provide the parties with an opportunity to reach or establish a plan that is fair and reasonable within the guidelines and may offer the services of a mediator;
- (e) require the public sector employer to submit a revised plan within such period not exceeding sixty days as the Commissioner may direct.

21. (1) Where

Power to
make order

- (a) a revised compensation plan is not submitted as directed by the Commissioner under clause 20(e); or
- (b) the parties are unable to reach agreement,
the Commissioner may make an order.

(2) Where the revised compensation plan is

Review of
revised plan

- (a) not within the limit; or
- (b) within the limit but is not fair and reasonable having regard to the guidelines,
the Commissioner may return it to the public sector employer for further consideration by the parties or may make an order.

(3) An order under subsection (1) or (2) may

Content of
order

- (a) declare the maximum increase that the Commissioner considers fair and reasonable having regard to the guidelines;
- (b) prohibit a public sector employer from implementing increases in compensation in excess of the maximum increase declared under clause (a);
- (c) require a public sector employer to withhold from future compensation payable to an employee any increase in compensation in excess of the maximum increase declared under clause (a);

(4) Without prejudice to subsection 16(4), where an order is made under subsection (1) or (2), the order may direct that the cost of incremental payments on salary scales and special adjustments within a compensation plan shall not exceed 1.5% of the straight time average hourly rate of pay of that group on the base date.

Order,
increments
and special
adjustments

(5) Without prejudice to subsection (3) or (4), an order under subsection (1) or (2) may direct that the review period for the group shall be a period of twenty-four months commencing on a date specified in the order and ending not later than twenty-four months after the date on which the order is made.

Modification
of review
period

(6) The Commissioner shall cause a copy of any order made under this section to be served on the public sector employer.

Service of
order

Filing order
in Supreme
Court

22. (1) The Commissioner may file in the Supreme Court a copy of a decision or order made by him as if it were an order of the court.

Appeal

(2) A decision or order filed under this section shall be deemed for all purposes to be an enforceable order of the Supreme Court but no appeal may be taken from that order.

PART III

GENERAL

Offences

23. (1) A person who contravenes section 10, 13 or 15 commits an offence and is liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for not more than six months, or to both.

Crown

(2) Notwithstanding any rule of law to the contrary, the Crown and its agents are subject to prosecution under this section.

Protection
from liability

24. No action for damages lies against the Commissioner or any other person appointed by the Commissioner for

(a) any act done in good faith in the performance or exercise of a power or duty; or

(b) any neglect or default in the performance or exercise in good faith of that power or duty,

under this Act.

Stated case

25. The Commissioner may refer a question of jurisdiction to the Supreme Court by way of stated case and the rules of court respecting a special case apply.

Notices

26. Where this Act requires that a person be notified, that notice is sufficiently given where it is in writing and

(a) served on that person; or

(b) mailed to the last address of that person known by the person giving the notice.

Evidence

27. The Commissioner may receive and accept any evidence and information on oath, affidavit or otherwise as in his discretion he considers proper, whether or not the evidence is admissible in a court of law.

Annual report

28. (1) The Commissioner shall, in each year, make a report to the Lieutenant Governor in Council of the activities of the Commissioner for the preceding calendar year.

- (2) The report shall be laid before the Legislative Assembly within fifteen days after it is submitted to the Lieutenant Governor in Council or if the Legislative Assembly is not then sitting, within fifteen days of the opening of the next session of the Legislative Assembly. Report to be laid before Legislative Assembly
29. (1) The Lieutenant Governor in Council may make regulations. Regulations
- (2) A regulation made under this section may be made retroactive in its operation to a day not earlier than the operative date. Regulations may be retroactive
30. Where a memorandum of agreement in the form set out in Schedule B is signed by an employer and the authorized representative of a group Exclusion
- (a) in the case of an existing group, within thirty days of the date on which this Act is enacted;
- (b) in the case of a group formed after this Act comes into force, within thirty days of the commencement of negotiations between the representative of that group and the employer; or
- (c) in the case of a group to which this Act applies by reason of their employer being prescribed as a public sector employer or being a municipality or other public body included in the Act pursuant to clause 1(j), within thirty days of the date of such prescription or inclusion,
- that group is excluded from the application of this Act.
31. (1) This Act comes into force thirty days after the date on which it is enacted. Commencement
- (2) When this Act comes into force it shall be deemed to have come into force on the operative date and is retroactive to the extent necessary to give it effect on and after the operative date. Retroactive operation

SCHEDULE A**GUIDELINES**

The following factors shall be taken into consideration for the purpose of determining if a compensation plan is fair and reasonable:

1. the ability of the employer to pay;
2. recent compensation experience of the group determined by calculating the amount, taken over the three years immediately before the base date, by which the percentage increase in compensation for that group has exceeded or fallen short of the percentage increase in the Consumer Price Index (Charlottetown/Summerside) published by Statistics Canada over the same period;
3. the average salary of the group by comparison to other groups within the province;
4. any historical relationship between the group and another comparable group within the province as evidenced by recent conscious tracking of settlements over a period of at least two consecutive years;
5. the recent compensation experience of persons performing work in the provincial private sector similar to that performed by employees in the group;
6. the extent to which the increase under the compensation plan is enhanced or reduced by the trade off of job security or other items;
7. any changes in labour productivity being measurable changes in output related to changes in manhours of labour used in its production; the savings realized by increases in labour productivity may be shared between the employer and the group;
8. the ability of the employer to recruit and retain competent staff.

SCHEDULE B

THIS AGREEMENT made this day of A.D. 1983.
BETWEEN:

(hereinafter referred to as "the employer"

OF THE FIRST PART

AND:

(hereinafter referred to as "the authorized
representative")

OF THE SECOND PART

WHEREAS the *Compensation Review Act*, Stats. P.E.I. 1983, c.6, s.30 (hereinafter referred to as the "Act") provides for the exclusion from the application of the Act of public sector employees whose authorized representative has entered into a memorandum of agreement with the public sector employer (otherwise referred to herein as "the employer");

AND WHEREAS the authorized representative has been duly authorized by the public sector employees who comprise its membership to enter into the said memorandum of agreement (otherwise referred to herein as "this agreement");

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

1. THAT the compensation plan entered into pursuant to this Agreement shall be of 24 months duration commencing on the day of 198 , at the end of which 24 month period this agreement shall expire.
2. THAT total compensation increases during the 24 month period commencing on the day of , 198 , shall be in accordance with the following:
 - (i) Increases in total compensation in the 24 month period shall be 5% of the straight time average hourly rate of pay of that group on the expiration date of the last collective agreement entered into between the parties except as provided in (iii) below.
 - (ii) Where an improvement to an employee benefit results in an additional cost to the employer, the maximum allowable increase specified in subsection (i) shall be reduced by an appropriate percentage to reflect that additional cost.
 - (iii) Additional compensation adjustments may be included if the costs of such adjustments do not exceed an additional 2.5% of the straight time average hourly rate of pay of that group on the expiration date of the last collective agreement entered into between the parties.

3. THAT no more than forty percent of the total negotiated increase in compensation in accordance with Clause 2 above shall be paid during the first 12 months of the term of the compensation plan referred to above.
4. THAT the normal collective bargaining process shall be employed to finalize the collective agreement between the parties, provided that no negotiated or arbitrated settlement in relation to the compensation plan contained therein shall provide for an increase in total compensation in excess of the limits set out in Clauses 2 and 3 above.
5. THAT no existing compensation plan shall be amended and no new compensation plan shall be entered into for a period of 30 days following the date on which the Act is enacted unless the said compensation plan complies with the terms of this agreement.
6. THAT there shall be no waiver by either party of the covenants or of the breach of the covenants contained in this agreement.

This Agreement is binding on the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their respective hands and seals on the day and year first above written.

SIGNED, SEALED &
DELIVERED in the
presence of:

(Employer)

SIGNED, SEALED &
DELIVERED in the
presence of:

(Authorized Representative)

POOR

QUALITY

ORIGINAL